

2005 DRAFTING REQUEST

Bill

Received: **12/29/2004**

Received By: **jkreye**

Wanted: **As time permits**

Identical to LRB:

For: **Jeff Fitzgerald (608) 266-2540**

By/Representing: **jason**

This file may be shown to any legislator: **NO**

Drafter: **jkreye**

May Contact:

Addl. Drafters:

Subject: **Tax, Other - alcohol and tobacco**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Fitzgerald@legis.state.wi.us**

Carbon copy (CC:) to: **joseph.kreye@legis.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

Selling cigarettes via the Internet

Instructions:

See Attached

Drafting History:

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|--|--|------------------------|----------------|------------------------|-----------------|-----------------|
| /P1 | jkreye 01/05/2005 | kfollett 01/27/2005 kfollett 02/01/2005 | rschluet 02/01/2005 | _____ | sbasford 02/01/2005 | | State |
| /P2 | jkreye 02/23/2005 jkreye 03/09/2005 | kfollett 03/01/2005 kfollett 03/09/2005 | jfrantze 03/01/2005 | _____ | lnorthro 03/01/2005 | | State Crime |

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| /2 | jkreye 04/19/2005 | kfollett 04/19/2005 | jfrantze 04/19/2005 | _____ | sbasford 04/20/2005 | sbasford 04/20/2005 | State Crime |
| | jkreye 04/28/2005 | kfollett 04/28/2005 | jfrantze 04/20/2005 | _____ | | | |
| /3 | | | pgreensl 04/28/2005 | _____ | lnorthro 04/28/2005 | lnorthro 04/28/2005 | State Crime |

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Intro.

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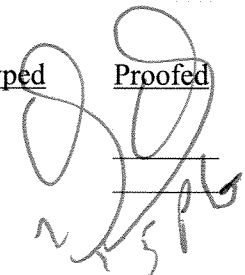
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LRB Drafting Request

To: Joseph Kreye
From: Jason Culotta (Rep. Fitzgerald's office)
Phone: 266-2540
Date: December 29, 2004

As discussed earlier today, please draft legislation based on this bill passed in Michigan earlier this month that would tax the internet sales of cigarettes.

A copy of the Michigan bill is enclosed.

Thank you.

SUBSTITUTE FOR
HOUSE BILL NO. 5668

A bill to amend 1993 PA 327, entitled
"Tobacco products tax act,"
by amending sections 2, 8, 9, and 11 (MCL 205.422, 205.428,
205.429, and 205.431), sections 2, 8, and 9 as amended by 1997 PA
187.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (a) "Cigarette" means a roll for smoking made wholly or in
3 part of tobacco, irrespective of size or shape and irrespective
4 of the tobacco being flavored, adulterated, or mixed with any
5 other ingredient, which roll has a wrapper or cover made of paper
6 or any other material. Cigarette does not include cigars.

7 (b) "Commissioner" means the ~~revenue commissioner~~ state
8 treasurer.

9 (c) "Counterfeit cigarette" means a cigarette in an

1 individual package of cigarettes or other container with a false
2 manufacturing label or a cigarette in an individual package of
3 cigarettes or other container with a counterfeit stamp.

4 (d) ~~-(e)-~~ "Counterfeit stamp" means any stamp, label, or
5 print, indicium, or character, that evidences, or purports to
6 evidence, the payment of any tax levied under this act and that
7 has not been printed, manufactured, or made by authority of the
8 department as provided in this act and has not been issued, sold,
9 or circulated by the department.

10 (e) ~~-(d)-~~ "Department" means the department of treasury.

11 (f) ~~-(e)-~~ "Financially sound" means a determination by the
12 department that the wholesaler or unclassified acquirer is able
13 to pay for its stamps in the ordinary course of business based on
14 criteria including, but not limited to, all of the following:

15 (i) Past filing and payment history with the department.

16 (ii) Outstanding liabilities.

17 (iii) Review of current financial statements including, but
18 not limited to, balance sheets and income statements.

19 (iv) Duration that the wholesaler or unclassified acquirer
20 has been licensed under this act.

21 (g) ~~-(f)-~~ "Individual package" means an individual packet or
22 pack used to contain or to convey cigarettes to the consumer.
23 Individual package does not include cartons, cases, or shipping
24 or storage containers that contain smaller packaging units of
25 cigarettes.

26 (h) ~~-(g)-~~ "Licensee" means a person licensed under this act.

27 (i) ~~-(h)-~~ "Manufacturer" means a person who manufactures or

1 produces a tobacco product.

2 (j) ~~-(i)-~~ "Noncigarette smoking tobacco" means tobacco sold
3 in loose or bulk form that is intended for consumption by smoking
4 and includes roll-your-own cigarette tobacco.

5 (k) ~~-(j)-~~ "Person" means an individual, partnership,
6 fiduciary, association, limited liability company, corporation,
7 or other legal entity.

8 (l) ~~-(k)-~~ "Place of business" means a place where a tobacco
9 product is sold or where a tobacco product is brought or kept for
10 the purpose of sale or consumption, including a vessel, airplane,
11 train, or vending machine.

12 (m) ~~-(l)-~~ "Retailer" means a person other than a
13 transportation company who operates a place of business for the
14 purpose of making sales of a tobacco product at retail.

15 (n) ~~-(m)-~~ "Sale" means a transaction by which the ownership
16 of tangible personal property is transferred for consideration
17 and applies also to use, gifts, exchanges, barter, and theft.

18 (o) ~~-(n)-~~ "Secondary wholesaler" means a person who sells a
19 tobacco product for resale, who purchases a tobacco product from
20 a wholesaler or unclassified acquirer licensed under this act,
21 and who maintains an established place of business in this state
22 where a substantial portion of the business is the sale of
23 tobacco products and related merchandise at wholesale, and where
24 at all times a substantial stock of tobacco products and related
25 merchandise is available to retailers for resale.

26 (p) ~~-(o)-~~ "Smokeless tobacco" means snuff, chewing tobacco,
27 and any other tobacco that is intended to be consumed by means

1 other than smoking.

2 (q) ~~—(p)—~~ "Stamp" means a distinctive character, indication,
3 or mark, as determined by the department, attached or affixed to
4 an individual package of cigarettes by mechanical device or other
5 means authorized by the department to indicate that the tax
6 imposed under this act has been paid.

7 (r) ~~—(q)—~~ "Stamping agent" means a wholesaler or unclassified
8 acquirer other than a manufacturer who is licensed and authorized
9 by the department to affix stamps to individual packages of
10 cigarettes on behalf of themselves and other wholesalers or
11 unclassified acquirers other than manufacturers.

12 (s) ~~—(r)—~~ "Tobacco product" means cigarettes, cigars,
13 noncigarette smoking tobacco, or smokeless tobacco.

14 (t) ~~—(s)—~~ "Transportation company" means a person operating,
15 or supplying to common carriers, cars, boats, or other vehicles
16 for the transportation or accommodation of passengers and engaged
17 in the sale of a tobacco product at retail.

18 (u) ~~—(t)—~~ "Transporter" means a person importing or
19 transporting into this state, or transporting in this state, a
20 tobacco product obtained from a source located outside this
21 state, or from any person not duly licensed under this act.
22 Transporter does not include an interstate commerce carrier
23 licensed by the interstate commerce commission to carry
24 commodities in interstate commerce, or a licensee maintaining a
25 warehouse or place of business outside of this state if the
26 warehouse or place of business is licensed under this act.

27 (v) ~~—(u)—~~ "Unclassified acquirer" means a person, except a

1 transportation company or a purchaser at retail from a retailer
2 licensed under the general sales tax act, 1933 PA 167, MCL 205.51
3 to 205.78, who imports or acquires a tobacco product from a
4 source other than a wholesaler or secondary wholesaler licensed
5 under this act for use, sale, or distribution. Unclassified
6 acquirer also means a person who receives cigars, noncigarette
7 smoking tobacco, or smokeless tobacco directly from a
8 manufacturer licensed under this act or from another source
9 outside this state, which source is not licensed under this act.
10 An unclassified acquirer does not include a wholesaler.

11 (w) ~~-(v)-~~ "Vending machine operator" means a person who
12 operates 1 or more vending machines for the sale of a tobacco
13 product and who purchases a tobacco product from a manufacturer,
14 licensed wholesaler, or secondary wholesaler.

15 (x) ~~-(w)-~~ "Wholesale price" means the actual price paid for a
16 tobacco product, including any tax, by a wholesaler or
17 unclassified acquirer to a manufacturer, excluding any discounts
18 or reductions.

19 (y) ~~-(x)-~~ "Wholesaler" means a person who purchases all or
20 part of his or her tobacco products from a manufacturer, who
21 sells 75% or more of those tobacco products to others for resale,
22 and who maintains an established business where substantially all
23 of the business is the sale of tobacco products or cigarettes and
24 related merchandise at wholesale and where at all times a
25 substantial stock of tobacco products and related merchandise is
26 available to retailers for resale. Wholesaler includes a chain
27 of stores retailing a tobacco product to the consumer if 75% of

1 its stock of tobacco products is purchased directly from the
2 manufacturer.

3 Sec. 8. (1) A person, other than a licensee, who is in
4 control or in possession of a tobacco product contrary to this
5 act, who after August 31, 1998 is in control or in possession of
6 an individual package of cigarettes without a stamp in violation
7 of this act, or who offers to sell or does sell a tobacco product
8 to another for purposes of resale without being licensed to do so
9 under this act, shall be personally liable for the tax imposed by
10 this act, plus a penalty of ~~100%~~ 500% of the amount of tax due
11 under this act.

12 (2) The ~~commissioner of revenue~~ **department** may permit a
13 representative of a licensed manufacturer of tobacco products
14 whose duties require travel in this state to transport up to
15 138,000 cigarettes, of which not more than 36,000 cigarettes may
16 bear no tax indicia or the tax indicia of another state. All
17 138,000 cigarettes must bear the stamp approved by the department
18 or the tax indicia of another state, if any. The total value of
19 tobacco products, excluding cigarettes, carried by a
20 representative shall not exceed a wholesale value of \$5,000.00.
21 A manufacturer shall notify the department of the manufacturer's
22 representatives that it currently employs who carry cigarettes or
23 tobacco products other than cigarettes in performing work duties
24 in this state. The manufacturer shall maintain a record of each
25 transaction by the manufacturer's representative for a period of
26 4 years immediately following the transaction and shall produce
27 the records upon request of the ~~commissioner~~ **state treasurer** or

1 the ~~commissioner's~~ **state treasurer's** authorized agent. Each
2 record shall identify the quantity and identity of the tobacco
3 products, detail whether exchanged, received, removed, or
4 otherwise disposed of and the identity of the retailer,
5 wholesaler, secondary wholesaler, vending machine operator, or
6 unclassified acquirer involved. The representative of the
7 manufacturer shall provide a copy of the record to the retailer,
8 wholesaler, secondary wholesaler, vending machine operator, or
9 unclassified acquirer at the time of the exchange or disposal.
10 The retailer, wholesaler, secondary wholesaler, vending machine
11 operator, or unclassified acquirer shall retain the copy of the
12 record in the same place and for the same time period as other
13 records required by this section. A representative shall not
14 exchange, or otherwise dispose of, within this state tobacco
15 products bearing the tax indicia of another state or receive
16 tobacco products bearing the tax indicia of another state from
17 retailers located within this state. A representative who sells,
18 exchanges, or otherwise disposes of cigarettes or tobacco
19 products other than cigarettes that do not bear the stamp or
20 other marking required by the department or sells, exchanges, or
21 otherwise disposes of cigarettes or tobacco products other than
22 cigarettes bearing the tax indicia of another state is guilty of
23 a felony, punishable by a fine of not more than \$5,000.00 or
24 imprisonment for not more than 5 years, or both.

25 (3) A person who possesses, acquires, transports, or offers
26 for sale contrary to this act 3,000 or more cigarettes, ~~or~~
27 tobacco products other than cigarettes with an aggregate

1 wholesale price of \$250.00 or more, or 3,000 or more counterfeit
2 cigarettes is guilty of a felony, punishable by a fine of not
3 more than \$50,000.00 or imprisonment for not more than 5 years,
4 or both.

5 (4) A person who possesses, acquires, transports, or offers
6 for sale contrary to this act 1,200 or more, but not more than
7 2,999, cigarettes, ~~or~~ tobacco products other than cigarettes
8 with an aggregate wholesale value of \$100.00 or more but less
9 than \$250.00, or 1,200 or more, but not more than 2,999,
10 counterfeit cigarettes, is guilty of a misdemeanor punishable by
11 a fine of not more than \$5,000.00 or imprisonment of not more
12 than 1 year, or both.

13 (5) A person who violates a provision of this act for which a
14 criminal punishment is not otherwise provided is guilty of a
15 misdemeanor, punishable by a fine of not more than \$1,000.00 or 5
16 times the retail value of the tobacco products involved,
17 whichever is greater, or imprisonment for not more than 1 year,
18 or both.

19 (6) A person who manufactures, possesses, or uses a stamp or
20 manufactures, possesses, or uses a counterfeit stamp or writing
21 or device intended to replicate a stamp without authorization of
22 the department, ~~or~~ a licensee who purchases or obtains a stamp
23 from any person other than the department, or who falsifies a
24 manufacturer's label on cigarettes or counterfeit cigarettes, is
25 guilty of a felony and shall be punished by imprisonment for not
26 less than 1 year or more than 10 years and may be punished by a
27 fine of not more than \$50,000.00.

1 (7) A person who falsely makes, counterfeits, or alters a
2 license, vending machine disc, or marker, or who purchases or
3 receives a false or altered license, vending machine disc, or
4 marker, or who assists in or causes to be made a false or altered
5 license, vending machine disc, or marker, or who possesses a
6 device used to forge, alter, or counterfeit a license, vending
7 machine disc, or marker is guilty of a felony punishable by a
8 fine of not more than \$5,000.00 or imprisonment for not more than
9 5 years, or both. A person who alters or falsifies records or
10 markings required under this act is guilty of a felony punishable
11 by a fine of not more than \$5,000.00 or imprisonment for not more
12 than 5 years, or both.

13 (8) The attorney general has concurrent power with the
14 prosecuting attorneys of the state to enforce this act.

15 (9) At the request of the department or its duly authorized
16 agent, the state police and all local police authorities shall
17 enforce the provisions of this act.

18 Sec. 9. (1) A tobacco product held, owned, possessed,
19 transported, or in control of a person in violation of this act,
20 and a vending machine, vehicle, and other tangible personal
21 property containing a tobacco product in violation of this act
22 and any related books and records are contraband and may be
23 seized and confiscated by the department as provided in this
24 section.

25 (2) If an authorized inspector of the department or a police
26 officer has reasonable cause to believe and does believe that a
27 tobacco product is being acquired, possessed, transported, kept,

House Bill No. 5668 as amended December 7, 2004

1 sold, or offered for sale in violation of this act for which the
2 penalty is a felony, the inspector or police officer may
3 investigate or search the vehicle of transportation in which the
4 tobacco product is believed to be located. If a tobacco product
5 is found in a vehicle searched under this subsection <<

6

7

>> or in

8 a place of business inspected under this act, the tobacco
9 product, vending machine, vehicle, <<other than a vehicle owned or
operated by a transportation company otherwise transporting tobacco
products in compliance with this act,>> or other tangible personal
10 property containing those tobacco products and any books and
11 records in possession of the person in control or possession of
12 the tobacco product may be seized by the inspector or police
13 officer and are subject to forfeiture as contraband as provided
14 in this section.

15 (3) As soon as possible, but not more than 5 business days
16 after seizure of any alleged contraband, the person making the
17 seizure shall deliver personally or by registered mail to the
18 last known address of the person from whom the seizure was made,
19 if known, an inventory statement of the property seized. A copy
20 of the inventory statement shall also be filed with the
21 ~~commissioner~~ **state treasurer**. The inventory statement shall
22 also contain a notice to the effect that unless demand for
23 hearing as provided in this section is made within 10 business
24 days, the designated property is forfeited to the state. If the
25 person from whom the seizure was made is not known, the person
26 making the seizure shall cause a copy of the inventory statement,
27 together with the notice provided for in this subsection, to be

1 published at least 3 times in a newspaper of general circulation
2 in the county where the seizure was made. Within 10 business
3 days after the date of service of the inventory statement, or in
4 the case of publication, within 10 business days after the date
5 of last publication, the person from whom the property was seized
6 or any person claiming an interest in the property may by
7 registered mail, facsimile transmission, or personal service file
8 with the ~~commissioner~~ **state treasurer** a demand for a hearing
9 before the ~~commissioner~~ **state treasurer** or a person designated
10 by the ~~commissioner~~ **state treasurer** for a determination as to
11 whether the property was lawfully subject to seizure and
12 forfeiture. The person shall verify a request for hearing filed
13 by facsimile transmission by also providing a copy of the
14 original request for hearing by registered mail or personal
15 service. The person or persons are entitled to appear before the
16 department, to be represented by counsel, and to present
17 testimony and argument. Upon receipt of a request for hearing,
18 the department shall hold the hearing within 15 business days.
19 The hearing is not a contested case proceeding and is not subject
20 to the administrative procedures act of 1969, 1969 PA 306, MCL
21 24.201 to 24.328. After the hearing, the department shall render
22 its decision in writing within 10 business days of the hearing
23 and, by order, shall either declare the seized property subject
24 to seizure and forfeiture, or declare the property returnable in
25 whole or in part to the person entitled to possession. If,
26 within 10 business days after the date of service of the
27 inventory statement, the person from whom the property was seized

1 or any person claiming an interest in the property does not file
2 with the ~~commissioner~~ **state treasurer** a demand for a hearing
3 before the department, the property seized shall be considered
4 forfeited to the state by operation of law and may be disposed of
5 by the department as provided in this section. If, after a
6 hearing before the ~~commissioner~~ **state treasurer** or person
7 designated by the ~~commissioner~~ **state treasurer**, the department
8 determines that the property is lawfully subject to seizure and
9 forfeiture and the person from whom the property was seized or
10 any persons claiming an interest in the property do not take an
11 appeal to the circuit court of the county in which the seizure
12 was made within the time prescribed in this section, the property
13 seized shall be considered forfeited to the state by operation of
14 law and may be disposed of by the department as provided in this
15 section.

16 (4) If a person is aggrieved by the decision of the
17 department, that person may appeal to the circuit court of the
18 county where the seizure was made to obtain a judicial
19 determination of the lawfulness of the seizure and forfeiture.
20 The action shall be commenced within 20 days after notice of the
21 department's determination is sent to the person or persons
22 claiming an interest in the seized property. The court shall
23 hear the action and determine the issues of fact and law involved
24 in accordance with rules of practice and procedure as in other in
25 rem proceedings. If a judicial determination of the lawfulness
26 of the seizure and forfeiture cannot be made before deterioration
27 of any of the property seized, the court shall order the

1 destruction or sale of the property with public notice as
2 determined by the court and require the proceeds to be deposited
3 with the court until the lawfulness of the seizure and forfeiture
4 is finally adjudicated.

5 (5) The department shall destroy all cigarettes forfeited to
6 this state. The department may sell ~~a~~ all tobacco ~~product or~~
7 products, except cigarettes, and other property forfeited
8 pursuant to this section at public sale. Public notice of the
9 sale shall be given at least 5 days before the day of sale. The
10 department may pay an amount not to exceed 25% of the proceeds of
11 the sale to the local governmental unit whose law enforcement
12 agency performed the seizure. The balance of the proceeds
13 derived from the sale by the department shall be credited to the
14 general fund of the state.

15 (6) The seizure and destruction or sale of a tobacco product
16 or other property under this section does not relieve a person
17 from a fine, imprisonment, or other penalty for violation of this
18 act.

19 (7) A person who is not an employee or officer of this state
20 or a political subdivision of this state who furnishes to the
21 department or to any law enforcement agency original information
22 concerning a violation of this act, which information results in
23 the collection and recovery of any tax or penalty or leads to the
24 forfeiture of any cigarettes, or other property, may be awarded
25 and paid by the state treasurer, ~~upon the certification of the~~
26 ~~commissioner,~~ compensation of not more than 10% of the net
27 amount received from the sale of any forfeited cigarettes or

1 other property, but not to exceed \$5,000.00 which shall be paid
2 out of the receipts from the sale of the property. If any amount
3 is issued to the local governmental unit under subsection (5),
4 the amount awarded under this subsection to a person who provides
5 original information that results in a seizure of cigarettes or
6 other property by a local law enforcement agency shall be paid
7 from that amount issued under subsection (5). If in the opinion
8 of the attorney general ~~—, the commissioner,~~ and the director of
9 the department of state police it is deemed necessary to preserve
10 the identity of the person furnishing the information, the
11 attorney general ~~—, the commissioner,~~ and the director of the
12 department of state police shall file with the state treasurer an
13 affidavit setting forth that necessity and a warrant may be
14 issued jointly to the attorney general ~~—, the commissioner,~~ and
15 the director of the department of state police. Upon payment to
16 the person furnishing that information, the attorney general ~~—~~
17 ~~the commissioner,~~ and the director of the department of state
18 police shall file with the state treasurer an affidavit that the
19 money has been by them paid to the person entitled to the money
20 under this section.

21 (8) Beginning September 1, 1998, if a retailer possesses or
22 sells cigarettes on which the tax imposed under this act has not
23 been paid or accrued to a wholesaler, secondary wholesaler, or
24 unclassified acquirer licensed under this act, the retailer shall
25 be prohibited from purchasing, possessing, or selling any
26 cigarettes or other tobacco products as follows:

27 (a) For a first violation, for a period of not more than 6

1 months.

2 (b) For a second violation within a period of 5 years, for a
3 period of at least 6 months and not more than 36 months.

4 (c) For a third or subsequent violation within a period of 5
5 years, for a period of at least 1 year and not more than 5
6 years.

7 (9) The prohibition described in subsection (8) shall be
8 effective upon service by certified mail or personal service on
9 the retailer of notice issued by the department ordering the
10 retailer to cease all sales and purchases of cigarettes and other
11 tobacco products. Upon receipt of this notice, the retailer may
12 return any tobacco products in the possession of the retailer
13 upon which the tax imposed by this act has been paid or accrued
14 to a wholesaler, secondary wholesaler, or unclassified acquirer
15 licensed under this act. The department shall notify all
16 licensed wholesalers, manufacturers, secondary wholesalers,
17 vending machine operators, and unclassified acquirers of any
18 retailer who has been prohibited from purchasing cigarettes or
19 other tobacco products and the duration of the prohibition. A
20 wholesaler, secondary wholesaler, or unclassified acquirer shall
21 not sell cigarettes or other tobacco products to a retailer after
22 receipt of notice from the department that the retailer is
23 prohibited from purchasing tobacco products. Any cigarettes or
24 other tobacco products found on the premises of the retailer
25 during the period of prohibition shall be considered contraband
26 and subject to seizure under this section, and shall constitute
27 an additional improper possession under this subsection. The

House Bill No. 5668 (H-5) as amended November 30, 2004

1 retailer may contest the order prohibiting purchase, possession,
2 or sale of tobacco products in accordance with the appeal
3 procedures and time limits provided in subsection (3) of this
4 section. After completion of the appeals provided or upon
5 expiration of the period to request such appeal, the department
6 shall issue a final order and make service upon the retailer of
7 an order to cease all purchases, possession, and sale of all
8 cigarettes and other tobacco products for a specified period as
9 appropriate. This order does not relieve the retailer from
10 seizure and sale of a tobacco product or other property under
11 this section, or relieve the retailer from a fine, imprisonment,
12 or other penalty for violation of this act.

13 Sec. 11. (1) ~~Beginning May 1, 1994, a~~ A person, either as
14 principal or agent, shall not sell or solicit ~~orders for a sale~~
15 of a tobacco product to be shipped, mailed, or otherwise sent or
16 brought into the state, to a person not a licensed manufacturer,
17 licensed wholesaler, licensed secondary wholesaler, licensed
18 vending machine operator, licensed unclassified acquirer,
19 licensed transporter, or licensed transportation company, unless
20 the tobacco product is to be sold to or through a licensed
21 wholesaler. ~~Each violation of this act is a separate offense.~~

22 (2) All sales conducted through the internet, by telephone,
23 or in a mail-order transaction shall not be completed unless,
24 before each delivery of cigarettes is made, whether through the
25 mail, through a transportation company, or through any other
26 delivery system, the seller has obtained from the purchaser an
27 affirmation that includes a [copy of a] valid government-issued document
that

1 confirms the purchaser's name, address, and date of birth showing
2 that the purchaser is at least the legal minimum age to purchase
3 cigarettes; that the cigarettes purchased are not intended for
4 consumption by an individual who is younger than the legal
5 minimum age to purchase cigarettes; and a written statement
6 signed by the purchaser that affirms the purchaser's address and
7 that the purchaser is at least the minimum legal age to purchase
8 cigarettes. The statement shall also confirm that the purchaser
9 understands that signing another person's name to the affirmation
10 is illegal; that the sale of cigarettes to individuals under the
11 legal minimum purchase age is illegal; and that the purchase of
12 cigarettes by individuals under the legal minimum purchase age is
13 illegal under the laws of the state of Michigan. The seller
14 shall verify the information contained in the affirmation
15 provided by the purchaser against a commercially available
16 database of governmental records, or obtain a photocopy, fax
17 copy, or other image of the valid, government-issued
18 identification stating the date of birth or age of the
19 purchaser.

20 (3) All invoices, bills of lading, sales receipts, or other
21 documents related to cigarette sales conducted through the
22 internet, by telephone, or in a mail-order transaction shall
23 contain the current seller's valid Michigan sales tax
24 registration number, business name and address of the seller, and
25 a statement as to whether all sales taxes and taxes levied under
26 this act have been paid. All packages of cigarettes shipped from
27 a cigarette seller to purchasers who reside in Michigan shall

1 clearly print or stamp the package with the word "CIGARETTES" on
2 the outside of all sides of the package so it is clearly visible
3 to the shipper. In addition, the package shall contain an
4 externally visible and clearly legible notice located on the same
5 side of the package as the address to which the package is
6 delivered, as follows:

7 "IF THESE CIGARETTES HAVE BEEN SHIPPED TO YOU FROM A SELLER
8 LOCATED OUTSIDE OF THE STATE IN WHICH YOU RESIDE, THE SELLER HAS
9 REPORTED UNDER FEDERAL LAW THE SALE OF THESE CIGARETTES TO OUR
10 STATE TAX COLLECTION AGENCY, INCLUDING YOUR NAME AND ADDRESS.
11 YOU ARE LEGALLY RESPONSIBLE FOR ALL APPLICABLE UNPAID STATE TAXES
12 ON THESE CIGARETTES."

13 If an order is made as a result of advertisement over the
14 internet, the tobacco retailer shall request the electronic mail
15 address of the purchaser and shall receive payment by credit card
16 or check before shipping. This subsection and subsection (2) do
17 not apply to sales by wholesalers and unclassified acquirers.

18 (4) The deliverer of the cigarettes is required to obtain
19 proof from a valid government-issued document that the person
20 signing for the cigarettes is the purchaser.

21 (5) As used in this section:

22 (a) "Computer" means any connected, directly interoperable or
23 interactive device, equipment, or facility that uses a computer
24 program or other instructions to perform specific operations,
25 including logical, arithmetic, or memory functions with or on
26 computer data or a computer program, and that can store,
27 retrieve, alter, or communicate the results of the operations to

1 a person, computer program, computer, computer system, or
2 computer network.

3 (b) "Computer network" means the interconnection of hardware
4 or wireless communication lines with a computer through remote
5 terminals or a complex consisting of 2 or more interconnected
6 computers.

7 (c) "Computer program" means a series of internal or external
8 instructions communicated in a form acceptable to a computer that
9 directs the functioning of a computer, computer system, or
10 computer network in a manner designed to provide or produce
11 products or results from the computer, computer system, or
12 computer network.

13 (d) "Computer system" means related, connected or
14 unconnected, computer equipment, devices, software, or hardware.

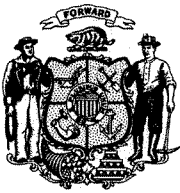
15 (e) "Credit card" means a card or device issued by a person
16 licensed under 1984 PA 379, MCL 493.101 to 493.114, or under the
17 consumer financial services act, 1988 PA 161, MCL 487.2051 to
18 487.2072, or issued by a depository financial institution as
19 defined in section 1a of the mortgage brokers, lenders, and
20 services licensing act, 1987 PA 173, MCL 445.1651a, under a
21 credit card arrangement.

22 (f) "Device" includes, but is not limited to, an electronic,
23 magnetic, electrochemical, biochemical, hydraulic, optical, or
24 organic object that performs input, output, or storage functions
25 by the manipulation of electronic, magnetic, or other impulses.

26 (g) "Internet" means the connection to the world wide web
27 through the use of a computer, a computer network, or a computer

1 system.

2 (h) "Sale conducted through the internet" means a sale of, a
3 solicitation to sell, a purchase of, or an offer to purchase
4 cigarettes conducted all or in part by accessing an internet
5 website.



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-1412/P1

JK: [signature]

2/2

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

in 1-5-05

D-N

Gen

1 AN ACT ...; relating to: selling cigarettes to consumers in this state via the
2 Internet, telephone, or mail-order and providing a penalty

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.
For further information see the **state** fiscal estimate, which will be printed as
an appendix to this bill.

**The people of the state of Wisconsin, represented in senate and assembly, do
enact as follows:**

3 SECTION 1. 139.345 of the statutes is created to read:

4 **139.345 Remote sales of cigarettes.** (1) In this section:

5 (a) "Consumer" means any individual who receives cigarettes for his or her
6 personal use or consumption or any individual who has title to or possession of
7 cigarettes for any purpose other than for sale or resale.

8 (b) "Government issued identification" includes a valid driver's license, state
9 identification card, passport, or military identification.

1 (2) No person may sell cigarettes to consumers in this state, or solicit sales of
2 cigarettes to consumers in this state, by way of the Internet, telephone, or
3 mail-order, unless the person does all of the following:

4 (a) Verifies the consumer's name and address and that the consumer is at least
5 18 years of age by any of the following methods:

6 1. The person uses a database, approved by the department, that includes
7 information based on public records.

8 2. The person receives from the consumer, at the time of purchase, a notarized
9 copy of a government issued identification.

10 3. The person uses a mechanism, other than a mechanism specified under subd.
11 1. or 2., that is approved by the department.

12 (b) Obtains from the consumer, at the time of purchase, a statement signed by
13 the consumer that confirms all of the following:

14 1. The consumer's name, address, and birth date.

15 2. That the consumer understands that no person who is under 18 years of age
16 may purchase or possess cigarettes or falsely represent his or her age for the purpose
17 of receiving cigarettes, as provided under s. 254.92.

18 3. That the consumer understands that any person who, for the purpose of
19 obtaining credit, goods, or services, intentionally uses, attempts to use, or possesses
20 with intent to use, any personal identifying information or personal identification
21 document of an individual, including a deceased individual, without the
22 authorization or consent of the individual and by representing that he or she is the
23 individual, that he or she is acting with the authorization or consent of the
24 individual, or that the information or document belongs to him or her, is guilty of a
25 Class H felony, as provided under s. 943.201.

(3) Any person who makes a sale of cigarettes as the result of an advertisement on the Internet shall, at the time of purchase, obtain the purchaser's electronic mail address and shall receive payment for the sale by credit card or check prior to shipping. This subsection does not apply to a person who holds a valid permit under s. 139.34.

(4) The invoice for any shipment of cigarettes sold to consumers in this state by way of the Internet, telephone, or mail-order shall specify the name and address of the seller and any valid permit issued under ~~this subchapter~~ that is held by the seller.

(5) All packages of cigarettes shipped to consumers in this state shall be clearly labelled “CIGARETTES” on all sides of the outside of such packages and shall provide the following notice on the same side of the package as the shipping address:

IF THESE CIGARETTES HAVE BEEN SHIPPED TO YOU FROM A SELLER LOCATED OUTSIDE OF WISCONSIN, THE SELLER HAS, AS PROVIDED UNDER FEDERAL LAW, REPORTED THE SALE OF THESE CIGARETTES TO THE DEPARTMENT OF REVENUE. YOU ARE RESPONSIBLE FOR ALL APPLICABLE UNPAID STATE TAXES ON THESE CIGARETTES.

(6) No person may deliver ~~of~~ package of cigarettes sold by way of the Internet, telephone, or mail-order to a person in this state unless the person making the delivery verifies that the person receiving the package is at least 18 years of age and is the person to whom the package is addressed.

(END)

O-Note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1412/P1dn

JK: *Kij*

Date

Representative Fitzgerald:

Please review this draft carefully to ensure that it is consistent with your intent. The Michigan legislation deals only with the sale of cigarettes and not the sale of tobacco products. Do you want the bill to address the sale of tobacco products? *se*

*** Please note that, under the bill, a person who makes a sale of cigarettes as the result of an advertisement on the Internet must obtain the purchaser's electronic mail address, but the bill does not specify why the person must do this. If the intent is to allow the person to confirm the sale electronically, for example, then the bill should indicate that.

I did not include the provisions related to counterfeit stamps because current law already prohibits the use of, and provides penalties for, the use of altered or counterfeit stamps. I also did not include the provisions related to counterfeit cigarettes because the definition for counterfeit cigarette seems vague, therefore, potentially unenforceable. Specifically, I'm not sure what it means for a cigarette package or container to have a "false manufacturing label." In order to impose a penalty for the sale or possession of counterfeit cigarettes, I believe it would be beneficial to have a definition for "false manufacturing label." Please contact me if you have any questions.

Joseph T. Kreye
Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1412/P1dn
JK:kjf:rs

February 1, 2005

Representative Fitzgerald:

Please review this draft carefully to ensure that it is consistent with your intent. The Michigan legislation deals only with the sale of cigarettes and not the sale of tobacco products. Do you want the bill to address the sale of tobacco products?

Please note that, under the bill, a person who makes a sale of cigarettes as the result of an advertisement on the Internet must obtain the purchaser's electronic mail address, but the bill does not specify why the person must do this. If the intent is to allow the person to confirm the sale electronically, for example, then the bill should indicate that.

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Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.state.wi.us

Kreye, Joseph

From: Pleva, Brian
Sent: Wednesday, February 16, 2005 2:16 PM
To: Kreye, Joseph
Subject: RE: Draft review: LRB 05-1412/P1 Topic: Selling cigarettes via the Internet
Joe, let's mirror the penalties provided under 125.07(1)(b)(2) (a-c).

I am still working on addressing the points you brought up in the last two paragraphs of the Drafter's Notes.

-----Original Message-----

From: Pleva, Brian
Sent: Tuesday, February 01, 2005 4:07 PM
To: Kreye, Joseph
Subject: RE: Draft review: LRB 05-1412/P1 Topic: Selling cigarettes via the Internet

Joe, a couple of things:

re: the 1st question in the Drafter's Note, we'd like the bill to deal only with the sale of cigarettes.

Also, can we add the following language (if buying cigarettes for minors isn't already illegal)? I'll get you the proposed penalties later--just wanted to check with you initially:

SEC. ##. PURCHASE FOR OR GIVING TO MINORS.

(a) **CIVIL VIOLATION.**-It shall be unlawful for any individual to purchase any cigarettes on behalf of, or to give cigarettes to, any minor. This section shall not apply to the handling or transportation of cigarettes by a minor under the terms of such minor's employment.

(b) **CIVIL PENALTY.**-Any individual who violates subsection (a) shall be liable for a civil penalty of-

(1) [\$] for the first violation of such subsection by such individual;

(2) [\$] for the second violation of such subsection by such individual within [time period]; or

(3) [\$] for the third or a subsequent violation of such subsection by such individual within [time period].

-----Original Message-----

From: Basford, Sarah
Sent: Tuesday, February 01, 2005 3:05 PM
To: Rep.Fitzgerald
Subject: Draft review: LRB 05-1412/P1 Topic: Selling cigarettes via the Internet

Following is the PDF version of draft LRB 05-1412/P1 and drafter's note.

Kreye, Joseph

From: Pleva, Brian
Sent: Wednesday, February 23, 2005 12:27 PM
To: Kreye, Joseph
Subject: RE: Draft review: LRB 05-1412/P1 Topic: Selling cigarettes via the
Importance: High

Joe, we're ready to go with this! I can't remember if we decided whether it was necessary to include a line about this not applying to wholesalers and traditional retailers.

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-----Original Message-----

From: Basford, Sarah

02/23/2005

Sent: Tuesday, February 01, 2005 3:05 PM

To: Rep.Fitzgerald

Subject: Draft review: LRB 05-1412/P1 Topic: Selling cigarettes via the Internet

Following is the PDF version of draft LRB 05-1412/P1 and drafter's note.

02/23/2005

Kreye, Joseph

From: Pleva, Brian
Sent: Wednesday, February 23, 2005 4:08 PM
To: Kreye, Joseph

Subject: RE: Draft review: LRB 05-1412/P1 Topic: Selling cigarettes via the Internet
Joe, on second thought, let's put something in there anyway to be on the safe side. I hate dealing with things like this halfway through the process, you know?

Thanks a lot!

-----Original Message-----

From: Kreye, Joseph
Sent: Wednesday, February 23, 2005 1:08 PM
To: Pleva, Brian
Subject: RE: Draft review: LRB 05-1412/P1 Topic: Selling cigarettes via the Internet

We decided it wasn't necessary. I'll make the changes and send you a new version.

Joseph T. Kreye

Legislative Attorney
Legislative Reference Bureau
(608) 266-2263

-----Original Message-----

From: Pleva, Brian
Sent: Wednesday, February 23, 2005 12:27 PM
To: Kreye, Joseph
Subject: RE: Draft review: LRB 05-1412/P1 Topic: Selling cigarettes via the Internet
Importance: High

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Subject: RE: Draft review: LRB 05-1412/P1 Topic: Selling cigarettes via the Internet

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To: Kreye, Joseph
Subject: RE: Draft review: LRB 05-1412/P1 Topic: Selling cigarettes via the Internet

Joe, a couple of things:

02/24/2005

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SEC. ##. PURCHASE FOR OR GIVING TO MINORS.

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-----Original Message-----

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Sent: Tuesday, February 01, 2005 3:05 PM

To: Rep.Fitzgerald

Subject: Draft review: LRB 05-1412/P1 Topic: Selling cigarettes via the Internet

Following is the PDF version of draft LRB 05-1412/P1 and drafter's note.



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-1412/P1

JK:kj:ts

RMK

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

in 2-23-05
D-N

re-gen

500M

1 AN ACT *to create* 139.345 of the statutes; **relating to:** selling cigarettes to
2 consumers in this state via the Internet, telephone, or mail order and providing
3 ~~a penalty~~ *penalties*

Analysis by the Legislative Reference Bureau

INSERT A
~~This is a preliminary draft. An analysis will be provided in a later version.~~
For further information see the **state** fiscal estimate, which will be printed as
an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 SECTION 1. 139.345 of the statutes is created to read:
5 **139.345 Remote sales of cigarettes.** (1) In this section:
6 (a) "Consumer" means any individual who receives cigarettes for his or her
7 personal use or consumption or any individual who has title to or possession of
8 cigarettes for any purpose other than for sale or resale.
9 (b) "Government issued identification" includes a valid driver's license, state
10 identification card, passport, or military identification.

1 (2) No person may sell cigarettes to consumers in this state, or solicit sales of
2 cigarettes to consumers in this state, by way of the Internet, telephone, or mail order,
3 unless the person does all of the following:

4 (a) Verifies the consumer's name and address and that the consumer is at least
5 18 years of age by any of the following methods:

6 1. The person uses a database, approved by the department, that includes
7 information based on public records.

8 2. The person receives from the consumer, at the time of purchase, a notarized
9 copy of a government issued identification.

10 3. The person uses a mechanism, other than a mechanism specified under subd.
11 1. or 2., that is approved by the department.

12 (b) Obtains from the consumer, at the time of purchase, a statement signed by
13 the consumer that confirms all of the following:

14 1. The consumer's name, address, and birth date.

15 2. That the consumer understands that no person who is under 18 years of age
16 may purchase or possess cigarettes or falsely represent his or her age for the purpose
17 of receiving cigarettes, as provided under s. 254.92.

18 3. That the consumer understands that any person who, for the purpose of
19 obtaining credit, goods, or services, intentionally uses, attempts to use, or possesses
20 with intent to use, any personal identifying information or personal identification
21 document of an individual, including a deceased individual, without the
22 authorization or consent of the individual and by representing that he or she is the
23 individual, that he or she is acting with the authorization or consent of the
24 individual, or that the information or document belongs to him or her, is guilty of a
25 Class H felony, as provided under s. 943.201.

1 (3) Any person who makes a sale of cigarettes as the result of an advertisement
2 on the Internet shall, at the time of purchase, obtain the purchaser's electronic mail
3 address and shall receive payment for the sale by credit card or check prior to
4 shipping. This subsection does not apply to a person who holds a valid permit under
5 s. 139.34.

6 (4) The invoice for any shipment of cigarettes sold to consumers in this state
7 by way of the Internet, telephone, or mail order shall specify the name and address
8 of the seller and any valid permit issued under s. 139.34 that is held by the seller.

9 (5) All packages of cigarettes shipped to consumers in this state shall be clearly
10 labelled "CIGARETTES" on all sides of the outside of such packages and shall
11 provide the following notice on the same side of the package as the shipping address:

12 IF THESE CIGARETTES HAVE BEEN SHIPPED TO YOU FROM A SELLER
13 LOCATED OUTSIDE OF WISCONSIN, THE SELLER HAS, AS PROVIDED
14 UNDER FEDERAL LAW, REPORTED THE SALE OF THESE CIGARETTES TO
15 THE DEPARTMENT OF REVENUE. YOU ARE RESPONSIBLE FOR ALL
16 APPLICABLE UNPAID STATE TAXES ON THESE CIGARETTES.

17 (6) No person may deliver a package of cigarettes sold by way of the Internet,
18 telephone, or mail order to a person in this state unless the person making the
19 delivery verifies that the person receiving the package is at least 18 years of age and
20 is the person to whom the package is addressed.

21 (END)

INSERT 3-20

D-Note

**2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1412/P2ins
JK:kjf:rs

Insert A

This bill requires that any person who sells cigarettes to consumers in this state, by way of the Internet, telephone, or mail order, verify the consumer's name and address and that the consumer is at least 18 years of age. The bill also requires that any person who delivers such cigarettes to consumers in this state verify that the person who purchased the cigarettes, and who receives the delivery, is at least 18 years of age. Under the bill, the package of cigarettes must provide notice to the consumer that he or she is responsible for any unpaid state taxes due on the sale of the cigarettes.

Insert 3 - 20

*insert
anal: Crime* →

- 1 **SECTION 1. 254.92 (2m)** of the statutes is created to read:
- 2 **254.92 (2m)** No person may purchase cigarettes on behalf of, or to provide to,
- 3 any person who is under 18 years of age. Any person who violates this subsection
- 4 may be:
- 5 (a) Required to forfeit not more than \$500 if the person has not committed a
- 6 previous violation within 30 months of the violation.
- 7 (b) Fined not more than \$500 or imprisoned for not more than 30 days or both
- 8 if the person has committed a previous violation within 30 months of the violation.
- 9 (c) Fined not more than \$1,000 or imprisoned for not more than 90 days or both
- 10 if the person has committed 2 previous violations within 30 months of the violation.
- 11 (d) Fined not more than \$10,000 or imprisoned for not more than 9 months or
- 12 both if the person has committed 3 or more previous violations within 30 months of
- 13 the violation.

move (17) (3) This section does not apply to any ^{retailer or wholesaler} person who sells cigarettes to consumers in this state and who holds a valid seller's permit under this subchapter or subch. III of ch. 77.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1412/P2dn

JK:kjf:78

Date

Representative Fitzgerald:

Please review this draft carefully to ensure that it is consistent with your intent.

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